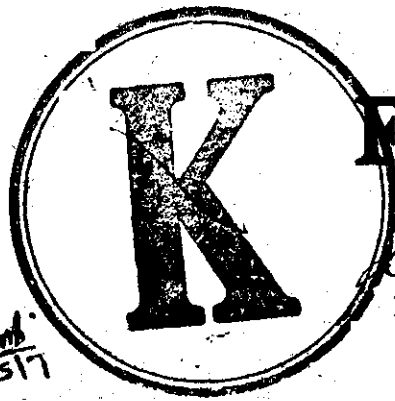


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File No. B.C.S. Rs. II/51

Legal Dept

B BRANCH

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Subject:— Rules under the Bombay
Civil Services Rules

File No. B.C.S. Rs. II/51
(R)

Gen. 194 a

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Office of the R.I.A.

The proposal in this case is to make a rule in the Bombay Civil Services Rules that a Government servant who applies for a foreign liquor ~~XXXXXXXXXXXXXXXXXXXX~~ permit on health ground and is certified by a Medical Board that his health would be permanently and seriously affected without liquor.

should be deemed to be inefficient to perform his official duty and should be removed or required to retire compulsorily from Government service. The question for consideration is whether such rule can be valid.

Section 40(1)(b) of the Bombay Prohibition Act which provides for permits on health grounds was supported in the Prohibition case under Art. 47 of the Constitution which requires a State to prohibit the consumption of intoxicating drinks and drugs except for medicinal purposes. Section 40 of the Bombay Prohibition Act does not provide that ~~any~~ Government servant is

debarred from applying for a permit under the section. A provision to that effect in the service rules would be in conflict with the provisions of that Act and also would not be in consonance with the Constitution. A Government servant cannot, therefore, be debarred from applying for a permit under section 40(1)(b).

the Bombay Prohibition Act. If, however, a Government servant applies for a permit and the Medical Board certifies that his health would permanently and seriously suffer if he is not *permitted the use of liquor,* in a sound liquor, it may be held that he is not in a sound or perfect state of health. But that fact alone would not be sufficient for the purpose of holding that he is inefficient and can be removed or made to retire from service on the ground of inefficiency. His case would not be different from that of a Government servant who may be suffering from such disease as diabetes and who requires the use of insulin to keep him fit. It is true that Government may hold that his further continuance in service would depend on the recommendation of the Medical Board whether on account of his being an addict to liquor, he can be held to be incapable of discharging his duties efficiently. It will be necessary to arrive at such a decision after a further examination by the Medical Board and the said Board giving its opinion regarding his efficiency on account of being addicted to drink.

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Remembrancer of Legal Affairs.

V.P. to P.D. No. 388-Conf. dated the 18th

April 1951.

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